

SUBCHAPTER J : ADMINISTRATIVE PROVISIONS

§§115.901-115.940

Effective May 22, 1997

ALTERNATE MEANS OF CONTROL

§115.901. Insignificant Emissions.

For persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the Executive Director, after consultation with appropriate local governmental agencies, may exempt a specific compound or a specific vent gas stream from the application of this chapter if the Executive Director determines that the emissions from the compound or specific vent gas stream will not make a significant contribution to air contaminants in the atmosphere.

Adopted July 13, 1994

Effective August 9, 1994

§115.910. Availability of Alternate Means of Control.

(a) Any person affected by a control requirement and/or emission specification of this chapter may request approval of an Alternate Means of Control (AMOC) plan using the procedures established in §115.913 of this title (relating to Procedures for Alternate Means of Control Plan Submittal). Such AMOC plan shall be approved if it is demonstrated that the plan meets all applicable criteria and procedures of §§115.911, 115.912, 115.913, 115.915, and 115.916 of this title (relating to Criteria for Approval of AMOC Plans; Calculations for Determining AMOC Reductions; Procedures for AMOC Plan Submittal; Public Notice Format; and Review of Approved AMOC Plans and Termination of AMOC Plans). The AMOC plans not satisfying the requirements of this undesignated head may apply for a site-specific State Implementation Plan revision approved by the Executive Director and the United States Environmental Protection Agency.

(b) An AMOC applicant may apply to the Executive Director for a waiver of portions of §115.913 of this title (relating to Procedures for Alternate Means of Control Plan Submittal) which may not apply to a single source AMOC application and for §115.914 and §115.915 of this title (relating to Procedures for an Alternate Means of Control Plan Approval and Public Notice Format). A single source AMOC application is one that proposes only the substitution of one control device for another.

(c) Application for an AMOC plan does not stay enforcement of regulations of this chapter.

(d) Any violation of an AMOC plan shall be subject to enforcement action as a violation of this chapter.

Adopted July 13, 1994

Effective August 9, 1994

§115.911. Criteria for Approval of Alternate Means of Control Plans.

An alternate means of control (AMOC) plan shall be approved if it meets each of the following criteria, as applicable.

(1) All facilities covered by the AMOC plan are and remain in the same Texas Natural Resource Conservation Commission account number.

(2) The AMOC plan must propose annual emission limits in tons per year for each source in the AMOC plan that, when collectively compared against actual annual emissions generated in 1990 (or subsequent years if a source in an AMOC was not operational prior to 1990), result in net emissions reductions equal to or greater than reductions that would be achieved if each source complied with all applicable requirements of this chapter.

(3) If the AMOC plan involves any source with a proposed annual emission limit which exceeds the baseline as defined in §115.912(a) of this title (relating to Calculations for Determining Alternate Means of Control Reductions), the AMOC plan must provide additional reductions made at alternative sources which comply with the guidelines in §115.912 of this title and are at least equal to the amount the source exceeds its baseline, multiplied by the applicable factor provided in the following subparagraphs.

(A) For sources located in the Beaumont/Port Arthur area, the applicable factor is 1.2.

(B) For sources located in the Dallas/Fort Worth area, the applicable factor is 1.15.

(C) For sources located in the El Paso area, the applicable factor is 1.2.

(D) For sources located in the Houston/Galveston area, the applicable factor is 1.3.

(E) For sources located in other areas in Texas, the applicable factor is 1.1.

(4) The AMOC application must demonstrate that the sum of the maximum daily potentials to emit from the sources subject to the proposed AMOC plan shall not be more than 200 pounds per day greater than the sum of the maximum daily potentials to emit from those sources if the emissions were controlled in accordance with this chapter, concerning Control of Air Pollution From Volatile Organic Compounds. For each nonattainment area, the Executive Director shall establish a limit upon the sum of the increases of the maximum daily potentials to emit from all AMOC plans in the nonattainment area. The limit shall be set so that the sum of the maximum daily potentials to emit shall not increase the measurable or modeled ozone level by one part per billion.

(5) The AMOC must be implemented and reductions created after January 1, 1991.

(6) Reductions in actual emissions accounted for in the AMOC plan must be surplus and remain surplus to reductions required by this chapter and any netting or offsetting requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area), §116.151

of this title (relating to New Major Source or Major Modification in Nonattainment Area Other than Ozone), §116.160 of this title (relating to Prevention of Significant Deterioration Requirements), and §116.161 of this title (relating to Source Located in an Attainment Area with a Greater than De Minimis Impact). Reductions for which the state has claimed credit in a State Implementation Plan may not be utilized as reductions in an AMOC plan.

(7) Mobile sources and indirect sources [Federal Clean Air Act §110(a)(5)(C)] shall not be included in the AMOC plan.

(8) For purposes of demonstrating reductions and establishing emission limits in any AMOC plan, quantification of emissions must be accomplished using any of the following methods as specified by the Executive Director:

(A) test methods approved by the Executive Director for the direct measurement of emissions, either continuously or periodically;

(B) calculation equations which are a function of process or control system parameters, activity levels, and/or throughput or production rates;

(C) mass balance calculations which are a function of inventory, usage, and/or disposal records;

(D) other appropriate methods acceptable to the Executive Director; or

(E) any combination of these approaches.

(9) The AMOC plan must establish emission limits and/or control requirements for all sources in the plan which render the proposed annual emission limits enforceable.

(10) The AMOC plan must include all necessary and appropriate provisions for monitoring, testing, reporting, and recordkeeping as specified by the Executive Director. The frequency of AMOC required monitoring, testing, reporting, and recordkeeping shall be sufficient to reasonably ensure compliance with applicable emission limits and/or control requirements. The monitoring, testing, reporting, and recordkeeping shall be at least as reliable, readily retrievable, and retained for a comparable period of time as the underlying requirements of this chapter, concerning the Control of Air Pollution From Volatile Organic Compounds.

(A) If this chapter includes monitoring, testing, reporting, and/or recordkeeping requirements for sources of the type(s) to be covered by an alternate emission limitation and/or control requirement, then such requirement may be used to render the AMOC plan enforceable. If this chapter does not include readily transferable monitoring, testing, reporting, and/or recordkeeping requirements for sources of the type(s) to be covered by an alternate emission limitation and/or control requirement, then priority may be given to any such set of requirements adopted under other TNRCC rules for the control of volatile organic compounds (VOC) emissions from sources of the type(s) to be covered by an alternate emission limitation and/or control requirement.

(B) If this chapter includes emission limits and/or control requirements for sources of the type(s) to be covered by an alternate emission limitation and/or control requirement, then such alternative emission limitation and/or control requirement may be based on the same averaging time as is applied to those same type sources under this chapter. If this chapter does not include emission limitations and/or control requirements for sources of the type(s) to be covered by an alternate emission limit and/or control requirement, then priority may be given to averaging times for emission limits and/or control requirements on similar units governed by other TNRCC rules limiting VOC emissions from sources of the type(s) to be covered by an alternate emission limit and/or control requirement.

(C) If no such TNRCC monitoring, testing, reporting, and/or recordkeeping rules have been adopted that satisfy the criteria of subsection (10)(A) and (B), then such requirements or averaging times shall be established on a case-by-case basis.

(D) Additional or more frequent monitoring, testing, reporting, and/or recordkeeping may be required by the Executive Director to ensure the integrity of any AMOC plan.

Adopted July 13, 1994

Effective August 9, 1994

§115.912. Calculations for Determining Alternate Means of Control Reductions.

(a) For purposes of this section, a source's baseline is defined as the annual emissions that are calculated assuming full compliance with the adopted requirements of this chapter and using data representative of actual operations in 1990 or thereafter for all variables necessary to calculate annual emissions for the identified source.

(1) For an alternate means of control (AMOC) application exclusively utilizing a source that existed prior to January 1, 1990, the AMOC application shall use data representative of actual operations in 1990.

(2) For an AMOC application utilizing a source that was created on or after January 1, 1990, the AMOC application shall use data representative of actual operations for the two years prior to the application for the AMOC, or other representative years, as determined by the Executive Director.

(3) For an AMOC application utilizing a source exempted from this chapter or with no applicable adopted requirements, or for a source whose actual annual emissions were less than the annual emissions calculated assuming full compliance with the adopted requirements, calculations will be based on actual annual emissions.

(b) The Alternate Means of Control (AMOC) applicant shall determine annual emissions limits for each source included in the AMOC plan by utilizing the best available data and good engineering practice, which may include the use of statistical techniques to address variations in the data.

(c) For any source not controlled as otherwise specifically required by this chapter where an applicable adopted requirement exists, the AMOC applicant shall calculate credits needed by subtracting the source's baseline from the source's annual emissions limit under the AMOC plan. This difference shall then

be multiplied by the appropriate factor in §115.911(3) of this title (relating to Criteria for Approval of AMOC Plans), to determine the credits that must be generated by other sources.

(d) For a source controlled beyond the requirements of this chapter, or for a source exempted from or with no applicable adopted control requirement in this chapter, the AMOC applicant shall calculate the amount of emission reduction credits generated by subtracting the source's annual emissions limit under the AMOC plan from the source's baseline, less any reductions that are generated for purposes discussed in 115.911(6) of this title.

(e) For all sources included in the AMOC plan, the AMOC applicant will sum the total of credits needed and the total of credits generated to establish that the credits generated exceed the credits needed.

(f) The maximum potential to emit shall be the maximum daily emissions that the source could emit subject to any physical, operational and regulatory limitations.

Adopted July 13, 1994

Effective August 9, 1994

§115.913. Procedures for Alternate Means of Control Plan Submittal.

(a) All persons requesting an alternate means of control (AMOC) plan as provided by §115.910 of this title (relating to Availability of AMOC) shall submit a proposed AMOC plan and demonstration to the Executive Director; copies of such plan and demonstration to the Texas Natural Resource Conservation Commission (TNRCC) Regional Office; copies to any local air pollution control program with jurisdiction over the TNRCC account affected by the AMOC plan; and copies to the United States Environmental Protection Agency Regional Office in Dallas.

(b) The proposed AMOC plan shall include the following information:

(1) the AMOC applicant name with mailing address, site name with physical address, TNRCC account number, and contact person including address and telephone number;

(2) an identification and a description of the sources involved in the AMOC plan including any applicable air permit numbers, plot plans, detailed flow diagrams, emission point numbers (EPNs), and facility identification numbers (FINS); an identification of the provisions of this chapter that are applicable to such sources; and an identification of promulgated provisions of this chapter that will be applicable to such sources; and a description of normal operating conditions for each source causing emissions;

(3) a quantification of the AMOC plan sources' actual emissions for the selected year;

(4) a quantification of annual emission limits and daily maximum potential emissions from all sources affected by the AMOC showing the difference between projected emissions from the affected source(s) without the AMOC plan and projected emissions resulting under the proposed AMOC plan. These calculations shall be done in accordance with the requirements of §115.912 of this title (relating to Calculations for Determining AMOC Reductions). Assumptions and emission factors utilized in the calculations shall be included;

(5) a specification of emission limitation(s) and control requirement(s) to be applicable to each source affected by the proposed AMOC plan. Emission limitations shall include actual annual emission limits in tons per year for each source. Control requirements must be established for each source to make annual emission limits enforceable;

(6) a description of the compliance methodologies, including monitoring, testing, reporting, and recordkeeping measures, that will be used to enforce the emission limitation(s) and/or control requirement(s) applicable to each source affected by the AMOC plan;

(7) a sample of reporting and recordkeeping forms to be utilized;

(8) a demonstration that the AMOC plan satisfies each applicable requirement of §115.911 of this title;

(9) a list containing the name, address, and telephone number of any air pollution control program with jurisdiction over the TNRCC account affected by the AMOC plan; and

(10) any other relevant information necessary to evaluate the merits and/or enforceability of the AMOC plan, as may be requested by the Executive Director.

(c) All representations with regard to the AMOC plan, as well as any provisions attached to the AMOC plan, become conditions upon which the subsequent AMOC plan is issued. It shall be unlawful for any person to vary from such representation or provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions. It shall also be unlawful for any AMOC holder to vary from the emission limits, control requirements, monitoring, testing, reporting, or recordkeeping requirements of an approved AMOC plan.

(d) Applications to amend or revise an AMOC plan shall be submitted subject to the requirements of this chapter.

Adopted July 13, 1994

Effective August 9, 1994

§115.914. Procedures for an Alternate Means of Control Plan Approval.

Upon a preliminary determination to approve or deny the proposed alternative means of control (AMOC) plan, the Executive Director shall, in writing, so notify the submitter of the plan, any local air pollution control program with jurisdiction over the Texas Natural Resource Conservation Commission (TNRCC or Commission) account affected by the AMOC plan, and the United States Environmental Protection Agency (EPA) Regional Office in Dallas.

(1) If the Executive Director makes a preliminary determination to approve the AMOC plan, then this notice shall include a copy of the AMOC plan as preliminarily approved.

(2) If the Executive Director makes a determination to deny the AMOC plan, then the notice shall include a description of the reasons for such determination of denial. This determination shall constitute

a final action of the Executive Director appealable to the Commission as provided in paragraph (7) of this section.

(3) Upon receipt of notice from the Executive Director that the AMOC plan has received preliminary approval, the AMOC applicant, at the applicant's own expense, shall cause to be published notice of the applicant's intent to obtain an AMOC plan and of the opportunity to submit written comments. Notice shall be consistent with §115.915 of this title (relating to Public Notice Format).

(4) The Executive Director shall consider and prepare a written response to all significant and timely written comments filed in connection with an AMOC plan.

(5) In response to the written comments, the Executive Director may modify the provisions of the AMOC plan, deny the AMOC plan, or approve the AMOC plan without changes.

(6) The Executive Director shall send written notice of his/her final determination concerning each AMOC plan to the submitter of the plan, the EPA Regional Office, any local pollution control program with jurisdiction over the TNRCC account affected by the AMOC plan, and to each person who submitted timely written comments. Such notice shall include final AMOC plan provisions, a copy of the response to comments, and an announcement of the opportunity to appeal the Executive Director's determination to the Commission. The notice required by this subsection shall be sent by a means evidencing receipt.

(7) Any person entitled to notice under paragraph (6) of this section may, within 15 days of the receipt of such notice, file with the Executive Director an appeal of the final determination on the AMOC plan. Such appeal shall be considered at the next regularly scheduled meeting of the Commission for which adequate notice may be made. Based on arguments submitted to the Commission during such appeal, the Commission may remand the AMOC determination to the Executive Director, deny the AMOC plan, or issue the AMOC plan unchanged.

(8) Within 45 days of final approval of the AMOC plan by the Executive Director, EPA may notify the TNRCC of EPA's disapproval of the Executive Director's final decision. Such notification shall be in writing and shall include a statement of the reason(s) for the disapproval and a specific listing of changes to the AMOC plan that must be made in order to overcome the disapproval. Anytime prior to the expiration of the 45-day period, EPA may notify the Executive Director that no disapproval is forthcoming. Upon receipt of a timely EPA disapproval, the Executive Director shall void or revise the AMOC plan, and reissue the notice as required by paragraph (6) of this section.

(9) If no appeal of the Executive Director's decision to approve the AMOC plan is filed pursuant to paragraph (7) of this section, the AMOC plan becomes effective upon the acceptance of the plan by EPA as described in paragraph (11) of this section.

(10) If an appeal of the Executive Director's decision is filed, the AMOC plan becomes effective upon the latter of the acceptance of the AMOC plan by the Commission or the acceptance of the AMOC plan by EPA.

(11) EPA acceptance is defined as explicit approval of the AMOC plan by EPA, notification by EPA to the Executive Director that no EPA disapproval is forthcoming, or failure of EPA to file notice of disapproval within 45 days after the Executive Director's final decision to approve the AMOC plan.

Adopted July 13, 1994

Effective August 9, 1994

§115.915. Public Notice Format.

(a) Public notice shall be published in the public notice section of two successive issues of a newspaper of general circulation in or closest to the municipality in which the facility with the Texas Natural Resource Conservation Commission (TNRCC) account affected by the alternative means of control (AMOC) plan is located.

(b) Public notice shall contain the following information:

- (1) AMOC plan application number assigned by the TNRCC;
- (2) AMOC applicant name;
- (3) type of facility;
- (4) a description of the location of the facility;
- (5) a brief description of the AMOC plan;
- (6) the Executive Director's preliminary determination to approve such plan;
- (7) the locations and availability of copies of the proposed AMOC plan, related documentation, and the Executive Director's preliminary analysis of the plan (including the TNRCC Austin and Regional Offices, any local pollution control program with jurisdiction over the TNRCC account affected by the AMOC plan, and the United States Environmental Protection Agency's (EPA) Regional Office);
- (8) an announcement of the opportunity to submit written comments on the AMOC plan;
- (9) the length of the public comment period (30 days from the final publication of this notice);
- (10) the procedure for submission of written public comments concerning the proposed AMOC plan; and
- (11) the name, address, and phone number of the regional TNRCC office to be contacted for further information.

(c) The AMOC plan submitter shall provide proof of adequate notice to the TNRCC, EPA, and any local pollution control program with jurisdiction over the TNRCC account affected by the AMOC plan before the Executive Director may take final action on the AMOC plan.

Adopted July 13, 1994

Effective August 9, 1994

§115.916. Review of Approved Alternate Means of Control Plans and Termination of AMOC Plans.

(a) For the purposes of this undesignated head, "compliance date" shall mean the date by which a source must comply with new or modified sections of this chapter.

(b) Unless revised to reflect new regulatory requirements, an alternative means of control (AMOC) plan becomes void on the compliance date specified for a new or modified section of this chapter affecting a source subject to an AMOC plan.

(c) The holder of an AMOC plan shall comply with the requirements of this chapter if the AMOC plan becomes void.

(d) Upon final approval of an AMOC plan, the owner or operator of the facilities affected by such plan shall keep a copy of the plan on the site affected by the plan which shall be made available to the Texas Natural Resource Conservation Commission representatives upon request.

(e) Upon request, each holder of an AMOC plan shall submit to the Executive Director a demonstration that the plan continues to meet all applicable criteria of this undesignated head.

(f) An AMOC holder is responsible for obtaining a new AMOC plan prior to the compliance date of any new or modified regulation of this chapter that affects a source subject to an AMOC plan.

Adopted July 13, 1994

Effective August 9, 1994

EARLY REDUCTIONS

§115.920. Applicability.

Any person affected by any control requirement of this chapter may apply to the Texas Natural Resource Conservation Commission (TNRCC) for a six-year extension of the compliance date for the control requirements imposed by any section of this chapter adopted after July 9, 1993, provided that the owner or operator of the affected sources has an approved early reduction application for those sources for which the owner or operator is seeking an extension as specified in 40 CFR 63.79, and for which:

(a) volatile organic compound (VOC) emissions reductions were made after January 1, 1991, and are greater than or equal to the reductions which would be achieved by implementing the applicable method of control specified in this chapter;

(b) the alternate VOC emissions reductions are verifiable through testing or calculation methods which conform to good engineering practice and which are approvable by the Executive Director, and represent reductions in the actual emissions from the base year 1990, provided there is no evidence that emissions in the base year 1990 are artificially inflated or substantially greater than emissions in other years prior to implementation of emissions reduction measures;

(c) the alternate VOC reductions created by the Early Reductions program must be surplus to reductions required by this chapter and any netting or offsetting requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area Other than Ozone), §116.161 of this title (relating to Source Located in an Attainment Area with a Greater than De Minimis Impact); and

(d) the sources in the early reduction application may be restricted to the grouping of the same type of emissions sources based upon determination by the Executive Director.

Adopted July 13, 1994

Effective August 9, 1994

§115.923. Documentation.

(a) For each source requesting a six-year extension of the compliance date for control requirements in accordance with §115.920 of this title (relating to Applicability), there shall be established an Early Reductions Plan reflecting the emission reduction for VOC which qualifies the source for the six-year extension. In lieu of preparing a site-specific State Implementation Plan (SIP) for such Early Reductions Plan, a facility owner or operator shall comply with the requirements of this undesignated head.

(b) Documentation required for approval of the extension shall demonstrate to the satisfaction of the TNRCC Executive Director that emissions data for the identified source reflects verifiable data based on information for such source. Documentation shall include but is not limited to:

(1) a listing and description of controlled equipment;

- (2) a listing of postponed required controls;
- (3) a listing of uncontrolled emissions identified in the 1990 Emission Inventory;
- (4) specific facility identification number(s) (FIN);
- (5) specific emission point number(s) (EPN);
- (6) account number(s);
- (7) identification of applicable permit number(s);
- (8) calculation(s), test data, and test methods for all VOC emissions associated with each identified source pertaining to paragraphs (1) and (2) of this subsection including an explanation;
- (9) calculation(s), test data, and test methods for VOC reductions as compared to the 1990 Emission Inventory;
- (10) an emission limitation; and
- (11) any other relevant information necessary to evaluate the merits and/or enforceability of the Early Reduction plan, as may be requested by the Executive Director.

Adopted July 13, 1994

Effective August 9, 1994

COMPLIANCE AND CONTROL PLAN REQUIREMENTS

§115.930. Compliance Dates.

For all counties affected by this chapter, the final compliance dates for revisions to control requirements are given within the section relating to counties and compliance schedules in each undesignated head if the final compliance date of any provision is after the date of adoption of the current revision to this chapter. If the compliance dates are not specified for any provision, the compliance date is past and all affected persons must be and remain in compliance with the provision as of the original compliance date.

Adopted November 10, 1993

Effective December 3, 1993

§115.932. Control Plan Procedure.

Within 30 days of a request by the Texas Natural Resources Conservation Commission (TNRCC), the owner or operator of any facility affected by the requirements of any undesignated head in this chapter (Chapter 115) shall submit a control plan for compliance which includes the compliance status of all emission controls required by this regulation, and a detailed description of the method to be followed to achieve compliance, specifying the exact dates by which the following steps will be taken to achieve compliance:

- (1) dates by which contracts for emission control systems process modifications will be awarded, or dates by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;
- (2) date of initiation of on-site construction or installation of emission control equipment or process change;
- (3) date by which on-site construction or installation of emission control equipment or process modification is to be completed; and
- (4) date by which final compliance is to be achieved. Initial compliance testing shall be conducted no later than 180 days after the compliance deadline.

Adopted November 10, 1993

Effective December 3, 1993

§115.934. Control Plan Deviation.

No persons affected by §115.932 of this title (relating to Control Plan Procedure) shall deviate from the terms of the control plans including the date for final compliance and the dates for accomplishing the required steps in such plans. The Executive Director may, upon application of any person affected, change the date for accomplishing the required steps in a plan. Any control plan that specifies a final compliance date subsequent to the date specified by any sections of this regulation must be approved by the Texas Natural Resource Conservation Commission (TNRCC). Approval of a delayed compliance order by the TNRCC does not constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency.

Adopted December 8, 1989

Effective February 19, 1990

§115.936. Reporting Procedure.

After a final control plan for compliance has been submitted to the Executive Director, progress reports shall be submitted every 90 days for all control plans specified in §115.932 of this title (relating to Control Plan Procedure). The Executive Director shall also be notified of the completion of each separate step in the control plan within five days after completion. All reports and notifications shall be submitted in writing by the person submitting the compliance control plan.

Adopted December 8, 1989

Effective February 19, 1990

§115.940. Equivalency Determination.

Upon final adoption of any volatile organic compound program of general applicability by the United States Environmental Protection Agency (EPA), the Executive Director may review the provisions of the EPA program and the corresponding state program to determine the essential equivalency of the two programs. If the Executive Director determines that the EPA program is essentially equivalent to the requirements for this chapter, the Executive Director will state by notice published in the Texas Register that the regulated community will be considered to be in compliance with the new EPA program if they are in compliance with the applicable provisions of this chapter. Conversely, the regulated community will be considered to be in compliance with the applicable provisions of this chapter if they are in compliance with the new EPA program. Notice of intent to publish such equivalency determination shall be provided to the appropriate EPA regional office 45 days prior to publication. The Executive Director shall review any objection from EPA prior to final publication. Each affected company must file a notice of intent to inform the state which program they intend to use. The Executive Director will then inform the EPA regional office of each notice of intent.

Adopted November 10, 1993

Effective December 3, 1993